

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CLIFFORD J. COLWELL and U.S. POSTAL SERVICE,
POST OFFICE, Youngstown, OH

*Docket No. 01-359; Submitted on the Record;
Issued August 2, 2001*

DECISION and ORDER

Before WILLIE T.C. THOMAS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether appellant has met his burden of proof in establishing that he developed disc herniations due to factors of his federal employment.

Appellant, a 47-year-old maintenance mechanic, filed a notice of occupational disease on December 7, 1999 alleging that he sustained herniated discs due to his employment activities including lifting, crawling, climbing and unloading trucks. The Office of Workers' Compensation Programs denied appellant's claim by decision dated March 15, 2000 finding that he failed to submit sufficient medical evidence to establish a causal relationship between his diagnosed condition and factors of his federal employment. Appellant, through his representative, requested an oral hearing. By decision dated September 26, 2000, the hearing representative affirmed the Office's March 15, 2000 decision.

The Board finds that appellant has failed to meet his burden of proof in establishing that he developed herniated discs due to factors of his federal employment.

To establish that an injury was sustained in the performance of duty in an occupational disease claim, a claimant must submit the following: (1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying employment factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the employment factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the employment factors identified by the claimant. The evidence required to establish causal relationship is rationalized medical opinion evidence, based upon a complete factual and medical background, showing a causal relationship between

the claimed condition and identified factors. The belief of a claimant that a condition was caused or aggravated by the employment is not sufficient to establish causal relation.¹

In this case, appellant submitted a magnetic resonance imaging scan dated November 24, 1999 diagnosing herniated discs at the L3-4 and L4-5 levels. Appellant also submitted several narrative statements. He initially attributed his condition to various employment duties performed over a period of time. Appellant later indicated that he believed that his condition was due to an incident on one day in September 1999 during which a 300-pound piece of equipment slipped and he attempted to prevent it from falling to the floor.²

Appellant also submitted medical evidence in support of his claim.³ Dr. Tracy Neuendorf, an osteopath, completed a report on December 15, 1999 and noted appellant's prior history of laminectomies in 1970 and 1974. He indicated that appellant had back pain for three months and performed a physical examination. Dr. Neuendorf diagnosed low back pain and lumbar radiculopathy. He did not provide an opinion on the causal relationship between appellant's diagnosed condition and any factors of his federal employment. This report is therefore insufficient to meet appellant's burden of proof.

In a report dated February 7, 2000, Dr. John Collis, a Board-certified neurosurgeon, diagnosed multiple herniated discs in the lumbar spine and recommended a myelogram. Appellant submitted an undated report from Dr. Collis at his oral hearing, noting appellant's history of a traumatic injury in September 1999, providing findings on physical examination and diagnosing herniated discs. Dr. Collis did not provide his opinion on the causal relationship between appellant's diagnosed conditions and his work activities in either of his reports. Therefore, these reports are not sufficient to meet appellant's burden of proof.

As appellant has failed to submit the necessary rationalized medical opinion evidence to establish a causal relationship between his diagnosed conditions and his federal employment, he has failed to meet his burden of proof and the Office properly denied his claim.

¹ *Lourdes Harris*, 45 ECAB 545, 547 (1994).

² The Board notes that the Office and the hearing representative declined to address the traumatic aspect of appellant's claim. The hearing representative noted that appellant could file an additional claim for a traumatic injury if he believed that his current condition was due to an injury occurring during one workday or shift. As the Office has not issued a final decision on this issue, the Board may not address it for the first time on appeal. 20 C.F.R. § 501.2(c).

³ Appellant submitted reports from Dr. David P. Esarco, a chiropractor. However, as Dr. Esarco failed to diagnose a subluxation of the spine as demonstrated by x-rays, he is not a physician for the purposes of the Federal Employees' Compensation Act, and his reports do not constitute medical evidence. 5 U.S.C. §§ 8101-8193, 8101(2).

The September 26, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
August 2, 2001

Willie T.C. Thomas
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member